

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
New DBSD Satellite Service G.P.,)	IB Docket No. 11-149
Debtor-in-Possession, and)	
TerreStar License Inc., Debtor-in-Possession)	
)	
Request for Rule Waivers and Modified)	
Ancillary Terrestrial Component Authority)	
)	
Fixed and Mobile Services in the)	ET Docket No. 10-142
Mobile Satellite Service Bands at)	
1525-1559 MHz and 1626.5-1660.5 MHz,)	
1610-1626.5 MHz and 2483.5-2500 MHz,)	
and 2000-2020 MHz and 2180-2200 MHz)	

COMMENTS OF GLOBALSTAR, INC.

Globalstar, Inc. (“Globalstar”) hereby comments on the above-captioned requests of New DBSD Satellite Services G.P., Debtor-in-Possession (“New DBSD”), and TerreStar License, Inc., Debtor-in-Possession (“TerreStar”) (together, the “2 GHz Licensees”), seeking rule waivers and license modifications in connection with the ancillary terrestrial component (“ATC”) authority in their respective licenses.¹ Globalstar supports the 2 GHz Licensees’ request for relief from the Commission’s integrated services gating requirement, which would allow those licensees to provide service to single-mode terrestrial wireless devices. Whether by rulemaking or through

¹ See *New DBSD Satellite Service G.P., Debtor-in-Possession, and TerreStar License Inc., Debtor-in-Possession, Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority; Pleading Cycle Established*, IB Docket No. 11-149, Public Notice, DA 11-1555 (rel. Sep. 15, 2011); Application for Modification of Ancillary Terrestrial Component Authority, File No. SES-MOD-20110822-00985 (Aug. 22, 2011) (“New DBSD Request”); Application for Modification of Ancillary Terrestrial Component Authority, File No. SES-MOD-20110822-00983 (Aug. 22, 2011) (“TerreStar Request”).

similar waivers, the Commission must also grant the same relief to Globalstar and other qualifying mobile satellite service (“MSS”) operators.

I. RELIEF FROM THE INTEGRATED SERVICES GATING REQUIREMENT IS IN THE PUBLIC INTEREST

On August 22, 2011, the 2 GHz Licensees requested parallel rule waivers and license modifications in connection with their current MSS ATC authorizations.² In particular, the 2 GHz Licensees each asked for a waiver of the Commission’s integrated services gating requirement to permit the provision of MSS ATC service to single-mode, terrestrial-only terminals.³ These licensees seek the flexibility to offer dual-mode terminals to all customers who want them, while making single-mode terrestrial terminals available to customers who do not need or desire the satellite function.⁴

Globalstar agrees with the 2 GHz Licensees that relief from the integrated services requirement furthers the public interest and serves the underlying goals of the Commission’s MSS ATC policy. Dual-mode MSS-terrestrial devices have limited commercial appeal to individual consumers and even to most government and business customers. As the 2 GHz Licensees state, “[t]oday, a mobile voice and data provider’s ability to attract customers depends

² These requests were submitted in conjunction with the proposed transfer of the 2 GHz Licensees’ MSS and ATC authorizations to DISH Network Corporation (“DISH”). *See DISH Network Corporation Files to Acquire Control of Licenses and Authorizations Held by New DBSD Satellite Services G.P., Debtor-in-Possession and TerreStar License Inc., Debtor-in-Possession*, IB Docket No. 11-150, Public Notice, DA 11-1557 (rel. Sep. 15, 2011). In these comments, Globalstar expresses no view on this proposed transfer of control.

³ To qualify for the “safe harbor” under the Commission’s existing integrated services gating requirement, an MSS licensee must demonstrate that, in providing terrestrial service, it will only use dual-mode handsets that can communicate with both the MSS network and the ATC component of the network. If an MSS licensee does not offer exclusively dual-mode devices, it can provide “other evidence” establishing that it will provide an integrated service offering to the public. A demonstration relying on “other evidence,” however, will likely be a difficult showing to make. *See* 47 C.F.R. § 25.149(b)(4).

⁴ New DBSD Request at 4-5; TerreStar Request at 4-5.

in large measure on its ability to provide its customers with the types of devices that best suit their needs. In a world of lighter-and-smaller-is-better, consumers prefer lighter weight handsets with longer battery life.”⁵ By allowing service to such lightweight, single-mode devices, relief from the integrated service rule will enable MSS licensees to attract the critical mass of MSS ATC subscribers necessary to establish a viable terrestrial offering. Application of this requirement, in contrast, would preclude arrangements with handset manufacturers, limit consumer choice, and stymie the growth of the MSS ATC customer base.

Moreover, by fostering the development of MSS ATC licensees’ terrestrial offerings, relief from the integrated services rule could help ensure the existence of viable and robust MSS operations in the United States. Having received such relief, an operator’s ATC services could generate the revenues and investment necessary to fund the substantial capital and operational costs of providing MSS.⁶ Thus, rather than undermine satellite services, this relief and greater terrestrial flexibility would promote the public interest by giving MSS licensees a stronger financial foundation on which to provide state-of-the-art, mission-critical satellite services to consumers and public safety personnel around the country. This outcome would be particularly beneficial for citizens in remote, unserved, and underserved areas of the United States that are beyond the reach of terrestrial networks but within MSS operators’ service footprints.⁷

⁵ New DBSD Request at 4; TerreStar Request at 4.

⁶ As Globalstar has previously described, Globalstar and other MSS operators have faced significant challenges in attracting investment and establishing a firm economic foundation on which to provide these vital services. Building and launching a satellite constellation is an exceptionally capital-intensive endeavor. Billions of dollars must be invested before the service can even be marketed to consumers. *See, e.g.*, Comments of Globalstar, Inc., ET Docket No. 10-142, at 25-26 (Sep. 15, 2010) (“Globalstar 2010 Comments”).

⁷ In more populated areas, MSS networks provide critical back-up communications capabilities for first responders and other public safety personnel during natural disasters and other emergencies, when terrestrial wireless facilities can be rendered temporarily unavailable.

Relief from the integrated services requirement and greater terrestrial flexibility in MSS spectrum would also make new spectrum capacity available for mobile broadband services, a step that would help address the nation's urgent need for additional mobile broadband spectrum.⁸ Globalstar itself has a nearly 20 MHz allotment of terrestrial use spectrum in the Big LEO band which can be quickly added to the nation's broadband "spectrum inventory" without the need for legislation or the relocation of incumbent licensees. As it considers the 2 GHz Licensees' requests and other similar proposals, the Commission should weigh this critical public interest benefit.

II. THE COMMISSION SHOULD GRANT SIMILAR RELIEF TO MSS LICENSEES PROVIDING SUBSTANTIAL SATELLITE SERVICE

In response to the 2 GHz Licensees' waiver request and other similar requests, the Commission has two procedural options for increasing the operational flexibility of these and other MSS licensees. First, the Commission can adopt rules of general applicability in its pending rulemaking proceeding on MSS-terrestrial flexibility,⁹ or, alternatively, the Commission (or International Bureau) can modify MSS licensees' ATC authority and/or waive its ATC rules in individualized licensing proceedings.¹⁰ In Globalstar's view, it would be more equitable and

⁸ The urgent need for additional spectrum to support mobile broadband is well established. In March 2010, the National Broadband Plan recognized that the "growth of wireless broadband will be constrained if government does not make spectrum available" and that if "the U.S. does not address this situation promptly, scarcity of mobile broadband could mean higher prices, poor service quality, an inability for the U.S. to compete internationally, depressed demand and, ultimately, a drag on innovation." See FCC, "Connecting America: The National Broadband Plan," at 77 (rel. March 16, 2010), *available at*: <<http://download.broadband.gov/plan/national-broadband-plan.pdf>> ("National Broadband Plan").

⁹ See *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Rcd 9481 (2010) ("NPRM/NOI").

¹⁰ For example, in January 2011, the International Bureau conditionally granted the MSS ATC waiver request submitted by LightSquared LLC ("LightSquared"). *LightSquared*

efficient for the Commission to eliminate the integrated service gating requirement and otherwise increase terrestrial flexibility through its rulemaking process, which would yield rules that apply uniformly to all MSS licensees.¹¹ Whichever regulatory mechanism the Commission utilizes to achieve greater flexibility in MSS spectrum, however, Globalstar urges the Commission to proceed both expeditiously and in an even-handed manner.

If the Commission continues to apply a piecemeal, case-by-case licensing approach and grants the 2 GHz Licensees' waiver request, Globalstar should be able to obtain similar terrestrial flexibility through an analogous modification of its ATC license or an analogous waiver request. Having invested well in excess of \$5 billion toward the development of its global MSS network, Globalstar is making full, intensive use of its Big LEO MSS spectrum. Today, Globalstar uses its global non-geostationary ("NGSO") MSS constellation to provide affordable, high-quality MSS to over 400,000 customers in over 120 countries around the world. Since initiating commercial service, Globalstar has provided mission-critical MSS offerings to the public, including emergency services and connectivity in rural and remote areas. In recent years, Globalstar has focused on the development of affordable, consumer-oriented devices and services, most notably offering an innovative MSS device – the SPOT Satellite GPS Messenger ("SPOT") – that plays a critical role in the provision of emergency and safety-of-life services to

Subsidiary LLC; Request for Modification of its Authority for an Ancillary Terrestrial Component, Order and Authorization, 26 FCC Rcd 566 (2011) ("LightSquared Order").

¹¹ Given the public interest benefits of greater terrestrial flexibility, Globalstar in response to the Commission's *NPRM/NOI* proposed that the Commission adopt a new, more flexible regulatory framework for MSS-terrestrial operators that provide substantial satellite service, including rule changes that would provide the 2 GHz Licensees with their requested relief. Among other things, Globalstar urged the Commission to adopt a more flexible approach that permits end-user customers (i) to purchase single-mode terrestrial devices that operate in MSS spectrum, and (ii) to sign up for terrestrial-only subscriptions from service providers operating in MSS spectrum. See Globalstar 2010 Comments at 8-9, 16-18.

individual consumers beyond terrestrial wireless reach. To date, the SPOT has been used to initiate more than 1450 rescues in over 51 countries and at sea.

In addition, Globalstar expects to become the first global LEO MSS voice and data company to have launched a state-of-the-art, second-generation MSS system. Over the past year, Globalstar has launched the first twelve satellites of its second-generation MSS constellation, and it has plans for two additional launches of six satellites each, one in December 2011 and the other early in 2012. Once operational, Globalstar's state-of-the-art second-generation MSS network should support reliable and effective voice and data services to consumers, public safety personnel, and other customers in the U.S. and internationally. With this second-generation MSS constellation in place, Globalstar will provide substantial satellite service under any reasonable definition and should be granted all available terrestrial flexibility in its Big LEO MSS spectrum.

Certainly, if the Commission grants the 2 GHz Licensees' waiver requests, an analogous grant to Globalstar in a separate license proceeding would be necessary to ensure a fair and non-arbitrary process. Following a grant of the 2 GHz Licensees' requests, Globalstar would be the only MSS licensee seeking greater terrestrial flexibility that has yet to receive such relief.¹² Globalstar has pursued this increased flexibility through the Commission's pending ATC rulemaking (*see* note 11 *supra*) as directed by the Commission's Bureaus in their September 2010 order suspending Globalstar's ATC authority,¹³ but, more than a year later, the

¹² Neither Inmarsat in the MSS L band nor Iridium in the Big LEO band has requested ATC authority or sought relief from the Commission's ATC gating requirements.

¹³ *Globalstar Licensee LLC; Application for Modification of License to Extend Dates for Coming into Compliance with Ancillary Terrestrial Component Rules And Open Range; Request for Special Temporary Authority*, Order, 25 FCC Rcd 13114, ¶ 42 & n.90 (IB; WTB; OET 2010) (stating that "to the extent the Commission would consider changes in its rules that might permit more extensive stand-alone terrestrial operations in this frequency band, this action would be

Commission has yet to follow up on its *NOI* in that rulemaking proceeding or respond to Globalstar's ATC proposals in any fashion. Meanwhile, LightSquared obtained its conditional waiver of the Commission's ATC gating requirements a little over over two months after filing its request for waiver and/or license modification.¹⁴ If the Commission were to grant the 2 GHz Licensees' requested relief in the instant licensing proceeding, while not granting such relief to Globalstar, it would be according unreasonably preferential treatment to these licensees (as well as LightSquared). The Commission should avoid this inequitable outcome – an outcome unlikely to withstand judicial review. As courts have made clear, absent sufficient justification, the Commission is obligated to provide similar regulatory treatment to similarly-situated entities under its jurisdiction.¹⁵

III. CONCLUSION

For the aforementioned reasons, the Commission should grant relief from the integrated services gating requirement and make clear that it will accord fair, even-handed treatment to similar requests from other MSS licensees. Whether this relief is provided in the Commission's pending rulemaking or through individualized licensing proceedings, such action will enable MSS ATC providers to attract terrestrial service customers, promote the economic viability of

taken following a proceeding in which a full record concerning all potentially available options can be developed,” and referencing the Commission's July 2010 *NPRM/NOI*).

¹⁴ See *LightSquared Order* ¶ 1.

¹⁵ The Commission abuses its discretion if it fails to “provide adequate explanation before it treats similarly situated parties differently.” *Petroleum Commc'ns, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994). See also *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005) (“Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.”); *Chadmoore Commc'ns, Inc. v. FCC*, 113 F.3d 235, 242 (D.C. Cir. 1997); *Adams Telecom, Inc. v. FCC*, 38 F.3d 576, 581 (D.C. Cir. 1994); *McElroy Elec. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732-33 (D.C. Cir. 1965).

MSS, encourage the full use of the MSS spectrum, and further broadband development in the United States.

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October 17, 2011

Certificate of Service

I hereby certify that on this 17th day of October, 2011, I caused a true and correct copy of the foregoing Comments of Globalstar, Inc. to be mailed by U.S. mail, postage prepaid, to:

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